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The H.O.P.E. Program and Mary S. Moore. Case 07–CA–144755

June 24, 2015

DECISION AND ORDER

BY MEMBERS HIROZAWA, JOHNSON,
AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by employee Mary S. Moore on January 20, 2015, the General Counsel issued a complaint on March 24, 2015, against The H.O.P.E. Program (the Respondent), alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. The Respondent failed to file an answer.

On April 21, 2015, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on April 23, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by April 7, 2015, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated April 9, 2015, advised the Respondent that unless an answer was received by April 16, 2015, a motion for default judgment would be filed. Nonetheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a limited liability corporation organized under the laws of the State of Florida with an office and place of business in Wyoming, Michigan (the Wyoming Call Center), engaged in operating a call center referral service. During the calendar year ending December 31, 2014, the Respondent, in conducting its operations described above, provided services valued in excess of \$50,000 to enterprises in States other than the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Terry Wilson held the position of manager at the Respondent's Wyoming Call Center and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

At all material times, Paul Cape held the position of team leader at the Respondent's Wyoming Call Center and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

About December 12, 2014, the Respondent, by Paul Cape, at its Wyoming Call Center, directed employees to sign a nondisclosure agreement prohibiting them from discussing wages and other terms and conditions of their employment.

About December 15, 2014, the Respondent's employee, Mary S. Moore, engaged in concerted activities with other employees for the purposes of mutual aid and protection, by refusing to sign, and encouraging other employees to refuse to sign, the nondisclosure agreement described above.

About December 15, 2014, the Respondent discharged Moore.

The Respondent engaged in the conduct described above because Moore engaged in concerted activities with other employees for the purposes of mutual aid and protection, and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7

of the Act, in violation of Section 8(a)(1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) of the Act by directing employees to sign a nondisclosure agreement prohibiting them from discussing wages and other terms and conditions of employment, we shall order the Respondent to rescind the nondisclosure agreement, remove from its files and records all references to the nondisclosure agreement, and notify employees in writing that this has been done and that the nondisclosure agreement is no longer in force.

In addition, having found that the Respondent has violated Section 8(a)(1) of the Act by discharging Mary S. Moore from her position because she engaged in protected concerted activities and to discourage employees from engaging in these or other concerted activities, we shall order the Respondent to offer Moore full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed and to make Moore whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful actions against her. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).¹ Additionally, we shall order the Respondent to compensate Moore for the adverse tax consequences, if any, of receiving a lump-sum backpay award and to file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

Further, the Respondent shall be required to remove from its files any and all references to the unlawful discharge of Moore and to notify Moore in writing that this

has been done and that the discharge will not be used against her in any way.

ORDER

The National Labor Relations Board orders that the Respondent, The H.O.P.E. Program, Wyoming, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating and maintaining a nondisclosure agreement prohibiting employees from discussing wages and other terms and conditions of their employment.

(b) Discharging or otherwise discriminating against employees because they engage in protected concerted activities, and to discourage employees from engaging in these or other concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the nondisclosure agreement prohibiting employees from discussing wages and other terms and conditions of their employment, remove from its files and records all references to the nondisclosure agreement, and notify employees in writing that this has been done and that the nondisclosure agreement is no longer in force.

(b) Within 14 days from the date of this Order, offer Mary S. Moore full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(c) Make Mary S. Moore whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of this decision.

(d) Compensate Mary S. Moore for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

(e) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful discharge of Mary S. Moore, and within 3 days thereafter, notify her in writing that this has been done and that the unlawful discharge will not be used against her in any way.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an elec-

¹ In the complaint, the General Counsel requests that Moore be reimbursed for any out-of-pocket expenses incurred while searching for work as a result of the discrimination against her. Because the relief sought would involve a change in Board law, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by the affected parties, and there has been no such briefing in this case. Accordingly, we decline to order this relief at this time. See, e.g., *Ishikawa Gasket America, Inc.*, 337 NLRB 175, 176 (2001), *enfd.* 354 F.3d 534 (6th Cir. 2004), and cases cited therein.

tronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility in Wyoming, Michigan, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 12, 2014.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official, on a form provided by the Region, attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 24, 2015

Kent Y. Hirozawa, Member

Harry I. Johnson, III, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT promulgate and maintain a nondisclosure agreement prohibiting you from discussing wages and other terms and conditions of employment.

WE WILL NOT discharge or otherwise discriminate against you because you engage in protected concerted activities, or to discourage you from engaging in these or other concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the nondisclosure agreement prohibiting employees from discussing wages and other terms and conditions of their employment, remove from our files and records all references to the nondisclosure agreement, and notify our employees in writing that this has been done and that the nondisclosure agreement is no longer in force.

WE WILL, within 14 days from the date of the Board's Order, offer Mary S. Moore full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Mary S. Moore whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, with interest.

WE WILL compensate Mary S. Moore for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters for her.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Mary S. Moore, and WE WILL, within 3 days thereafter, notify Mary S. Moore in writing that this

has been done and that the unlawful discharge will not be used against her in any way.

THE H.O.P.E. PROGRAM

The Board's decision can be found at www.nlr.gov/case/07-CA-144755 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

